

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**INDICTMENT FOR VIOLATION OF
THE FEDERAL GUN CONTROL ACT**

UNITED STATES OF AMERICA	*	CRIMINAL DOCKET NO. 07-050
v.	*	SECTION: "B"
ELROY LUMAR	*	VIOLATION: 18 U.S.C. § 922(g)(1) 18 U.S.C. § 924(a)(2)

*** * ***

FACTUAL BASIS

If this case were to proceed to trial, the government would prove the defendant **ELROY LUMAR** guilty beyond a reasonable doubt of a one count Indictment, which charges **LUMAR** with a violation of the Federal Gun Control Act under Title 18, United States Code Section 922(g)(1) and 924 (a)(2). The government would establish through credible and competent witnesses and evidence the following facts:

On Tuesday, September 5, 2006 at 9:25 a.m., New Orleans Police Officers Scott Seymour, Richard Welch, Jennifer Payne and Fred Fath went to 2843 South Liberty Street, New Orleans, Louisiana to execute a warrant for **ELROY LUMAR**. The defendant was

wanted by Sixth District Detective A. Asaro for an aggravated assault that took place on or about September 3, 2006. New Orleans Police Officers Seymour, Payne and Welch went to the front of the residence in an attempt to make contact with those persons inside. Police Officer Fath positioned himself in the rear of the residence. Officer Seymour knocked on the front door and made contact with a female subject. Officer Seymour saw the defendant, **ELROY LUMAR**, grab what appeared to be an assault rifle from the side of the front living room sofa and run towards the rear of the residence. Police Officer Fred Fath, who was stationed at the rear of the residence could hear what sounded like someone running through the house. Officer Fath positioned himself near a window of the residence in order to see what was causing the commotion or the running sound inside the house. When he peered through a window, he saw the defendant with an assault rifle and concealing the assault rifle in a rear room.

Meanwhile, the police officers stationed at the front of the residence were allowed inside the residence. At that time, the defendant re-appeared at the front of the house without the firearm he had taken to the rear of the residence. The defendant was arrested and advised of his Miranda Rights. Another subject that was sleeping on the living room sofa was also handcuffed for the officers' safety. The only other adult in the house was the female that answered the door. Officer Seymour asked the defendant where he hid the weapon. The defendant admitted that he hid the weapon behind the bathtub in the rear bathroom. Officer Fath subsequently went to that location and found an Arsenal model SA M-5, 5.56 x 45 mm semi-automatic rifle bearing serial number AN 02 0195 behind the bathtub.

Later on September 5, 2006, ATF Special Agents Noble and Evanoski conducted an in-custody interview with **LUMAR** at the NOPD Sixth District Office. Special Agents Noble and Evanoski explained and provided **LUMAR** with a copy of ATF advisory of rights form. **LUMAR** stated that he understood his rights, signed the form and agreed to answer questions. **LUMAR** stated that the rifle recovered in his residence was owned by his nephew Leonard Lumar. **LUMAR** stated that he allowed his nephew to keep the rifle at his residence because Leonard lived with his mother and she did not allow firearms in her house. **LUMAR** stated that the rifle had been at 2843 South Liberty Street for approximately one month. **LUMAR** stated that he thought his nephew had purchased the rifle at “Elliot’s” for \$600 or \$700. **LUMAR** stated that his nephew does not live at 2843 South Liberty but stays there from time to time. **LUMAR** also admitted that he had a 2004 felony conviction for simple burglary in New Orleans and was still on probation for this offense. **LUMAR** also admitted that he knew that it was a violation of his probation to possess a firearm or have a loaded rifle in his residence.

ATF agents conducted an interstate nexus of the firearm that had been possessed by **ELROY LUMAR**. Their investigation revealed that the Arsenal model SA M-5, 5.56 x 45 mm semi-automatic rifle bearing serial number AN 02 0195 was not manufactured in the state of Louisiana. More specifically, it was originally manufactured in the state of Nevada by Arsenal Inc. Therefore, the firearm would have moved in interstate commerce in order for it to be in the state of Louisiana. The ATF agent also concluded that the Arsenal rifle is a firearm as defined in 18 U.S.C. 921(a)(3).

Law enforcement officers were able to confirm that the defendant was in fact convicted of a crime punishable by imprisonment for more than one year. More specifically, the defendant pleaded guilty in Orleans Parish District Court to simple burglary in violation of Louisiana Revised Statute 14:62. The defendant was sentenced to four years hard labor. That sentence was suspended and he received four years active probation. Louisiana probation and parol officer, Jennifer Greer, also confirmed that the defendant was being supervised by her for the conviction he received on September 30, 2004 in Orleans Parish Criminal District Court docket number 448659 “H” for simple burglary.

Moreover, the defendant by signing this Factual Basis hereby agrees that the facts contained therein are true, and that all evidence introduced at trial would establish the elements of the offense and prove the defendant's guilt beyond a reasonable doubt of a violation of Title 18, United States Code, Sections 922(g)(1) and 924 (a)(2).

APPROVED AND ACCEPTED:

ELROY LUMAR

Date

Defendant

MARTIN E. REGAN, JR.

Date

Attorney for Defendant

ABRAM McGULL, II

Date

Attorney for United States of America